

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

In re Gorilla Companies LLC, et al.,)	No. CV-09-1327-PHX-DGC
Debtors.)	No. AP-09-00507-RJH
)	No. BK-09-02898-RJH
)	No. BK-09-02901-CGC
)	No. BK-09-02903-GBN
)	No. BK-09-02905-CGC
Gorilla Companies, LLC, a Delaware limited liability company,)	
Plaintiff,)	ORDER
vs.)	
Sharon Van Tassel, and Darrell Van Tassel, husband and wife; Robb M. Corwin and Jillian C. Corwin, husband and wife; 13, LLC, an Arizona limited liability company; and 13 Holdings, LLC, an Arizona limited liability company,)	
Defendants.)	

Gorilla Companies LLC (“Gorilla”) is a debtor-in-possession currently under chapter 11 bankruptcy. *In re Gorilla*, No. BK-09-02898-RJH (Bankr. D. Ariz. Feb. 20, 2009). Gorilla filed an adversary pleading in the bankruptcy case. Doc. 1, *Gorilla v. Van Tassel*, No. AP-09-00507-RJH (Bankr. D. Ariz. May 8, 2009). The adversary complaint alleges that Sharon Van Tassel, a former employee, misappropriated funds from one of Gorilla’s wholly-owned subsidiaries. *Id.*

1 Van Tassel commenced this action by filing a motion to withdraw the reference from
2 bankruptcy court. Doc. 1, *Gorilla v. Van Tassel*, No. CV-09-01327-PHX-DGC (D. Ariz.
3 June 19, 2009). The Court denied that motion and a subsequent one filed by Defendants
4 (Doc. 12) without prejudice. Docs. 11, 16.

5 On August 17, 2010, Gorilla filed a notice of no objection to withdrawal of the
6 reference and a request for a final pretrial conference. Doc. 17. Gorilla states that the
7 bankruptcy court has issued its summary judgment rulings, that certain tort and other claims
8 remain against Defendants (other than 13 Holdings, LLC), and that those claims are ready
9 for a jury trial in this Court. *Id.* On September 16, 2010, this Court issued an order directing
10 Defendants to file a response to Gorilla's notice. Doc. 18. Defendants filed the response
11 (Doc. 19) and Gorilla replied (Doc. 20).

12 Defendants concur in withdrawal of the reference as to the Van Tassels, 13, LLC, and
13 13 Holdings, LLC, and request a settlement conference. Doc. 19 at 4. Defendants Van
14 Tassels and 13, LLC also ask the Court to rule on their objections to the bankruptcy court's
15 denial of summary judgment and denial of a motion to compel discovery against third-party
16 National Bank of Arizona. *Id.* at 2, 3. Defendants contend that they are entitled to *de novo*
17 review on the summary judgment ruling and at least clear-error review on the discovery
18 ruling. *Id.* Gorilla objects, arguing that the only means by which this Court can review the
19 bankruptcy court's decisions is on appeal under Federal Rules of Bankruptcy Procedure
20 8001(b) and 8003. Doc. 20 at 3. The Court disagrees with Gorilla.¹


21 Federal law allows bankruptcy courts to hear matters that are noncore but related to
22 a title 11 case. 28 U.S.C. § 157(c)(1). Under § 157(c)(1), the district court shall consider the
23 bankruptcy court's proposed findings of fact and conclusions of law in entering a final order
24 or judgment in such proceedings, and shall review *de novo* "those matters to which any party
25

26 ¹ Gorilla cites *In re Cutter*, 398 B.R. 6, (9th Cir. BAP 2008), but there is no indication
27 in *Cutter* that the two cases align procedurally. Because the procedural posture controls the
28 method of review, compare 28 U.S.C. §§ 157(b)(1) and (c)(2) with § 157(c)(1), Gorilla's
argument is unpersuasive.

1 has timely and specifically objected.” *Id.* This Court previously deemed the adversary
2 proceeding to be noncore and related to a title 11 case, and exercised its discretion under
3 § 157(c)(1) and § 157(d) to continue the reference in bankruptcy court. Doc. 11 at 8, 9.
4 Accordingly, the Court will review *de novo* the bankruptcy court decisions to which
5 Defendants filed timely objections.

6 **IT IS ORDERED** that reference of the adversary proceeding (Doc. 17) is withdrawn.
7 The Parties shall appear at a status conference on **November 9, 2010 at 4:00 p.m.** The
8 purpose of the status conference will be to discuss Defendants’ request for a settlement
9 conference, what if any briefing should be permitted on Defendants’ objections, and
10 scheduling of a final pretrial conference.

11 DATED this 14th day of October, 2010.

12
13
14 

15 David G. Campbell
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28